



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

Sawyer County Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 206745

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Pursuant to petition filed November 3, 2022, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Sawyer County Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a telephone hearing was held on Tuesday, December 20, 2022 at 10:45 AM at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Sawyer County Human Services  
10610 Main Street  
PO Box 730  
Hayward, WI 54843

Respondent:

██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. The respondent (CARES # [REDACTED]) is a resident of Wood County who received FS benefits as a household of one in Sawyer County from June 8, 2022 through July 15, 2022. Exhibit 7.
2. Respondent and [REDACTED] have a young child in common. [REDACTED] received her own FS benefits as a household of two, which included her and the child she had in common with respondent.
3. Respondent was incarcerated in jail from June 7, 2022 until at least July 15, 2022. Respondent's testimony and Exhibits 1 and 9. During that time his FS card was used 10 times. This included 4 purchases at DG, Pittsville; 4 purchases at Walmart, Wisconsin Rapids; one purchase at Dollar Tree, Wisconsin Rapids, and one purchase at Kwik Trip, Wisconsin Rapids. The Kwik Trip purchase was made on July 6, 2022. Exhibit 10.
4. The agency conducted an investigation into the FS usage during respondent's period of incarceration. The only surveillance footage that was able to be obtained was from the July 6, 2022, Kwik Trip transaction. A female in her 20's was shown using respondent's FS card. The agency's investigator was able to identify the woman as [REDACTED] based on a comparison with her Facebook picture. The identity was further confirmed by a neighbor of respondent who was shown the surveillance pictures by the agency's investigator. The neighbor also told the investigator that he works with the woman's sister. Testimony of CSI investigator and Exhibit 4.
5. On November 4, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent intentionally violated FS rules by allowing someone outside his FS assistance group to use his FS card while he was incarcerated.
6. On the morning of the hearing, the agency representative spoke to respondent about his FS usage while he was incarcerated. He indicated he allowed [REDACTED] to purchase food for their child. Testimony of agency representative.
7. The respondent was mailed an Enrollment and Benefits Handbook on February 1, 2022. Exhibit 6. That material notified him that an intentional violation of the FS program could result in being barred from the program. The Handbook instructed respondent that it was a violation of FS rules to allow "... another person to use your FoodShare benefits to purchase food that is not for your household." Exhibit 12.

## **DISCUSSION**

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Respondent testified that his mother had his wallet containing his FS card while he was incarcerated. He did not give her the card or authorize her to use it. He also did not tell anyone the PIN for his FS card but that someone could easily guess it as it was the year of his birth. He further claimed he was unaware of the FS transactions she made while he was incarcerated. He also indicated that while incarcerated [REDACTED] contacted him and requested to use his FS card to purchase food for their 18-month-old daughter. It was supposed to be a one-time only incident. He indicated that he had used his FS card in the past to purchase food for his daughter. He claimed that he was not aware that it violated program rules to use his benefits to purchase food for his daughter.

Pursuant to federal regulations, eligible food program benefits may be used only by a FS household or by an individual the FS household selects to purchase eligible food for the household. 7 C.F.R. §274.7(a). And, pursuant to state statute, an “unauthorized person” is prohibited from knowingly using FS benefits. Wis. Stat. §946.92(2)(f). “Unauthorized person” is defined to include a person who is not an eligible person. Wis. Stat. §946.92(2)(e)3. Consistent with the above-cited federal regulation and state statutes, FS policy states:

The cardholder is the only person that can make authorized purchases on the QUEST card, unless he or she verbally authorizes another person to make purchases on their behalf for their assistance group.

[Emphasis added.] FoodShare Wisconsin Handbook §7.3.2.4.

The Enrollment and Benefits Handbook, which is provided to FS recipients, including respondent, indicates the following:

### **FoodShare Intentional Program Violation**

Fraud or intentional program violations by a person in your household may result in his or her disqualification from FoodShare. This means the person will not be able to get FoodShare benefits:

- For one year after the first violation.
- For two years after the second violation.
- Permanently after the third violation.

Any member of the household who intentionally breaks any of the following rules can be barred from the FoodShare program for the time specified above:

- Trading, selling, buying, or altering FoodShare benefits, including the attempt to trade, sell, buy, or alter FoodShare benefits online and/or in person.
- *Allowing another person to use your FoodShare benefits to purchase food that is not for your household.*
- Returning items purchased with FoodShare benefits for cash or gift cards.
- Using FoodShare benefits to buy or trade for ineligible FoodShare items, like alcohol, tobacco, or rent.
- Using another person’s FoodShare benefits, identification card, or other documentation.

[Emphasis added.] Exhibit 1 and found online at <https://www.dhs.wisconsin.gov/publications/p0/p00079.pdf>.

The agency contended that the respondent committed an IPV by allowing another person to use his FS benefits while he was incarcerated. He received FS as part of a one-person household. Thus, the FS benefits had to be used solely for his benefit. As he was incarcerated, purchases made using his FS Quest card during that time would not have been for his benefit.

I find the record to be insufficient to demonstrate that respondent knowingly was involved in authorizing or assisting his mother to use his FS card while he was incarcerated. The record does, however, clearly demonstrate that he had authorized [REDACTED], the mother of his child, to use his card on at least one occasion while he was incarcerated. He credibly testified he authorized its use solely for the benefit of their young child. While that child was not part of his FS household, it is not unreasonable under the circumstances here to conclude that he was unaware the prohibition on the use of his benefits for individuals outside his household applied to his young child. It appears that in the end [REDACTED] used his card for purchases unrelated to their child. However, the record did not refute respondent's contention that she exceeded the scope of the authority he provided by making those other purchases. While the record demonstrates a program violation occurred here, it was not shown to be an intentional or knowing violation. As such, I am ordering the agency to reverse its IPV finding.

Respondent is on notice that his FS benefits may only be used for the individuals in his FS assistance group. He cannot use those benefits for anyone else, even his child, if they are not included in his assistance group. If he has any doubt about who is in his assistance group, he needs to contact the FS agency to obtain that information.

### **CONCLUSIONS OF LAW**

The petitioner has not proven by clear and convincing evidence that respondent committed a FS IPV.

**NOW, THEREFORE, it is ORDERED**

That the petitioner's determination is reversed, and that the petitioner may neither make a finding that the respondent committed a first IPV of the FoodShare program or disqualify him from participating in the FS program for one year based on this hearing record.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

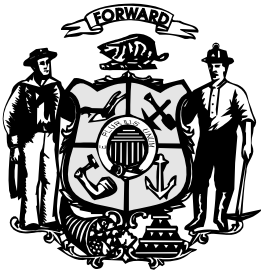
Given under my hand at the City of Madison,  
Wisconsin, this 17th day of January, 2023



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\sJason M. Grace  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Northern Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Leanna Becker - email
- Shawna White - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 17, 2023.

Sawyer County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability

[REDACTED]

[REDACTED]